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Testimony of Raphael L. Podolsky

Banking Committee public hearing -- February 25, 2016

S.B. 170 – Foreclosure Mediation Program

SUPPORT WITH AMENDMENT

This bill makes relatively minor changes to the Foreclosure Mediation Program. We support the bill generally but note that the count of days in l. 35-36 and l. 52 appears to be backwards. Issuance of an execution to a marshal should be at least five business days before service, rather than “not later than” five business days. Similarly, the marshal should attempt to find the defendant at least four business days before notice to the town’s chief executive officer, rather than “not later than.” Without these changes, especially a change to l. 35-36, we could NOT support the bill.

S.B. 171 – Banking Department’s security deposit amendments

SUPPORT WITH AMENDMENTS

This bill strengthens the portions of the Landlord-Tenant Security Deposit Act concerning the payment of interest. By law, security deposits are supposed to be escrowed and interest is supposed to be paid annually. The bill proposes changes in both these areas. While we support this bill generally, we think that some of these changes may be counterproductive or unnecessary. In particular, we support clarifying that unpaid interest must be compounded annually (this is already the law but is not explicit in the existing statute), allowing the tenant to request that annual interest be credited to the next month’s rent, and allowing the tenant to request proof that the security deposit has been escrowed in accordance with the statute. We believe, however, that the proposed mechanism for enforcing a failure to provide escrow documentation is unnecessary and confusing, and we therefore think it best that lines 209-222 be removed from the bill. The Banking Commissioner already has the power to enforce the escrow requirement; and a remedy that involves the tenant potentially withholding rent is likely to result in the landlord bringing an eviction and the tenant having to fight it off.

H.B. 5292 – Protecting Tenants at Foreclosure Act

SUPPORT

This bill makes the state Protecting Tenants at Foreclosure (PTFA) permanent. The statute, which was originally modeled on a federal law, recognizes that an estimated 40% of occupants affected by foreclosure are tenants, not owners. It allows a bone fide tenant who is in occupancy at the time a foreclosure is completed to remain 90 days after foreclosure or until the end of the lease, whichever is later. Although adoption of the statute was triggered by the foreclosure crisis, for tenants living in foreclosed buildings, the need for the protection of the statute remains. The bill passed the House last year as part of H.B. 6801 but was never taken up in the Senate in the closing days of the session. This bill would provide another chance for passage.

H.B. 5293 – Retail Instalment Sales Financing Act **SUPPORT WITH AMENDMENT**

This bill (1) requires that unearned insurance premiums on an a retail instalment sales contract be credited to the back bill if the goods purchased are repossessed; (2) prohibits holders of such contracts from imposing service fees for accepting payment by telephone or over the internet; (3) clarifies the notice to be given prior to repossession; and (4) makes a number of minor wording changes in the statute. We support the bill. The Committee should, however, use this bill to clarify existing language in l. 181-202 of the bill. That section limits deficiency judgments after a motor vehicle or boat has been repossessed. It provides that, if the motor vehicle or boat is not listed in the appropriate NADA guide, the court must determine the fair market value at retail minus the cost of resale. If, however, the motor vehicle or boat is listed in the appropriate NADA guide, then there is a rebuttable presumption that the amount to be determined is half the difference between NADA retail and NADA trade-in, i.e., the fair market value at retail is presumptively reduced by half the difference between retail and trade-in value to represent the cost of resale. This should be clarified by inserting the phrase "minus the reasonable costs of resale" in l. 183 and l. 192.

H.B. 5294 – Recovery of possessions from repossessed vehicles

**SUPPORT WITH
AMENDMENT**

We believe that this bill is intended to protect the right of motor vehicle owners to protect their personal property in a car that is about to be repossessed or has been repossessed. Unfortunately, as drafted, the bill is likely to have the opposite effect. We therefore urge that it be reworded. A creditor who repossesses a car has a secured interest in the motor vehicle whose purchase was financed but has no legal claim to personal property inside the car. It follows that the owner should be able to reclaim the property from the car at any time. This bill requires that the repossession notice give the car owner 15 days to remove personal property before repossession (if the notice is given before repossession) or 15 days after repossession (if the car is repossessed without advance notice). The problem is that the new wording implies that the failure to act within this timeframe results in a waiver of the right to reclaim personal possessions in the vehicle. In effect, this will override the doctrine that the creditor's security interest does not apply to unrelated personal possessions.

In order to avoid this misreading of the intention of the bill, wording must be added to make clear that passage of 15 days does not restrict the car owner's rights. We suggest adding the following or similar language in l. 14 and l. 43 of the bill:

Nothing in this subsection shall be deemed to limit the right of the retail buyer to remove personal property from the motor vehicle at any time after repossession.

Without this change, we do NOT support the bill.